

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

**JONATHAN BRANNON,**

**Plaintiff,**

**vs.**

**DALE WHITE,**

**Defendant.**

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**Case No. 4:10cv1704 TCM**

**MEMORANDUM AND ORDER**

This 42 U.S.C. § 1983 case is before the Court on the motion of Plaintiff, Jonathan Brannon, for appointment of counsel.

Plaintiff alleges in his pro se complaint that a correctional officer, Dale White, threatened him and then pushed him into a wall, face first, in violation of his Eighth Amendment right not to be subjected to cruel and unusual punishment.<sup>1</sup>

"[W]hen an indigent prisoner has pleaded a nonfrivolous cause of action, a court 'may' appoint counsel." **Phillips v. Jasper County Jail**, 437 F.3d 791, 794 (8th Cir. 2006). "The relevant criteria for determining whether counsel should be appointed include the factual complexity of the issues, the ability of the indigent person to investigate the facts, the existence of conflicting testimony, the ability of the indigent person to present the claims, and the complexity of the legal arguments." **Id.** Consideration of these criteria at this stage of the proceedings militates against the appointment of counsel. The issues are neither

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<sup>1</sup>Other claims were made against other defendants; however, Plaintiff was granted leave by the Honorable Stephen J. Limbaugh, Jr., United States District Judge for the Eastern District of Missouri, to proceed in forma pauperis only on his claims against Wall.

factually nor legally complex. The allegations are of acts, i.e., threats and force, taken against Plaintiff; hence, there does not appear to be any facts to be investigated.

For the foregoing reasons, Plaintiff's motion [Doc. 4] is therefore DENIED without prejudice.

/s/ Thomas C. Mummert, III  
THOMAS C. MUMMERT, III  
UNITED STATES MAGISTRATE JUDGE

Dated this 15th day of November, 2010.